

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MARGUERITE CARRUBBA

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1238

HARRISON COUNTY, MISSISSIPPI BY AND
THROUGH ITS BOARD OF SUPERVISORS;
HARRISON COUNTY SHERIFF GEORGE PAYNE;
WAYNE PAYNE; DIANE GATSON RILEY;
STEVE CAMPBELL; RICK GATSON; RYAN TEEL;
KARLE STOLZE, WILLIAMS PRIEST, JAMES A.
GONDLES, JR. AMERICAN CORRECTIONAL
ASSOCIATION; JOHN AND JANE DOES 1-3;
HEALTH ASSURANCE LLC AND J. L. WHITE

DEFENDANTS

DEFENDANT, GEORGE PAYNE'S MOTION IN LIMINE NO. 9
TO BAR PLAINTIFF'S EVIDENCE AND REFERENCES TO
RECORDINGS/NOTES ALLEGEDLY MADE BY REGINA RHODES,
WHILE EMPLOYED AT THE HCADC

COMES NOW, Defendant, Sheriff George Payne, in his official capacity, by and through his attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and moves this Honorable Court in *limine*, for an Order barring Plaintiff's evidence and references to recordings/notes allegedly made by Regina Rhodes, while employed at the HCADC. In support thereof, Defendant states as follows:

1. Defendant respectfully moves this Court to bar Plaintiff from offering any reference, testimony or argument referencing the recordings/notes allegedly made by Regina Rhodes, while employed at the HCACD, pursuant to Fed. R. Evid. 801 and 802, being inadmissible hearsay. See Rhode's Notes, **Exhibit "1"**. Further, these exhibits are unsworn and unauthenticated and prohibited by Fed. R. Evid. 901. None of these exhibits would constitute admissible evidence, because they are hearsay and unsworn, untrustworthy, and should be barred from this trial. Additionally, Plaintiff improperly attempts to rely on testimony of a fact witness, who was never

properly designated by Plaintiff as an expert in this case, and who would not be permitted to offer her opinions at trial, and which is prohibited by Fed. R. Evid. 701-704, and Fed. R. Civ. P. 26 and 16.

2. Further, Regina Rhodes left the employment of the HCADC on April 7, 2006. See Exhibit "2" attached hereto. As such, she was not present nor on staff when this incident occurred and her knowledge of the conditions at the HCADC during the 70 days between her departure and this incident could only be based upon inadmissible hearsay.

WHEREFORE PREMISES CONSIDERED Defendant, George Payne respectfully requests this Court to enter an Order granting this Motion in Limine and respectfully requests the Court to enter an Order as follows:

- A) Directing the Plaintiff through their respective counsel, and counsel individually, not to mention, refer to, interrogate concerning, voluntarily answer, or attempt to convey before the jury whether orally or through a document, at any time during these proceedings, in any manner, either directly or indirectly, the subject matters as stated above without first informing the Court and obtaining permission of the court outside the presence and hearing of the jury;
- B) Instructing the Plaintiff, through their respective counsel, and counsel individually, not to make any reference or inference to the fact that this motion has been filed, argued or ruled upon by this Court; and
- C) Instructing Plaintiff and Plaintiff's attorney to warn and caution each and every witness appearing in their phase of this litigation to strictly comply with the Court's ruling.

RESPECTFULLY SUBMITTED, this the 28th day of July, 2010.

**GEORGE PAYNE, JR., IN HIS OFFICIAL CAPACITY
ONLY, Defendant**

DUKES, DUKES, KEATING & FANCA, P.A.

BY: /s/Cy Faneca
CY FANCA

CERTIFICATE OF SERVICE

I, CY FANECA, do hereby certify that I have this day electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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This, the 28th day of July, 2010.

s/CyFaneca
CY FANECA

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